

## Corporate & Financial Weekly Digest

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### **Federal Banking Regulators Agree to Revise and Strengthen FDIC "Backup" Authority**

On July 12, the four bank regulatory agencies, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision (OTS), and the Federal Deposit Insurance Corporation (FDIC) entered into a Memorandum of Understanding (MOU) that enhances the FDIC's existing backup authority over insured depository institutions that the FDIC does not directly supervise. These institutions include national banks, federal savings associations and savings banks, and state-chartered banks that are members of the Federal Reserve System.

According to a press release issued by the FDIC, "[t]he revised agreement will improve the FDIC's ability to access information necessary to understand, evaluate, and mitigate its exposure to insured depository institutions, especially the largest and most complex firms. FDIC Chairman Sheila Bair said: "The FDIC needs to have a more active on-site presence and greater direct access to information and bank personnel in order to fully evaluate the risks to the deposit insurance fund on an ongoing basis and to be prepared for all contingencies."

Specifically, the revised MOU gives the FDIC backup supervision authority under an expanded list of circumstances, including when the insurance pricing system suggests an insured depository institution might be at higher risk, when institutions are defined as "large" under international regulatory guidelines, or when large, interconnected bank holding companies are defined as "systemic" by the financial reform legislation passed by Congress. At large, complex insured depository institutions, the FDIC will establish an expanded continuous, full-time staff presence on-site.

In a public statement supporting the MOU, Comptroller of the Currency John Dugan, who serves on the FDIC's Board of Governors, noted "a critical need that, in carrying out this important FDIC function, nothing be done to undermine the primary supervisory responsibility and accountability of the primary federal regulator." According to Chairman Bair, "[t]he FDIC supports the role of the primary federal regulator and has no interest in infringing upon their authorities. However, the FDIC has needs that are separate and distinct from the primary federal regulator that must be met in order to satisfy our statutory responsibilities." Neither the Federal Reserve nor the OTS issued a formal press release with respect to the MOU.

According to a memorandum prepared by three FDIC division directors and approved by FDIC General Counsel Michael Bradfield, “[t]his proposal addresses the recommendations made by the FDIC and Treasury Inspectors General.... In particular, the MOU explicitly provides that it does not limit the authority of the FDIC to make Special Examinations of [insured depository institutions] both covered and uncovered by this MOU....”

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